Prison Litigation Reform Act

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by

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Overview

- Prison Litigation Reform Act – background
- Hurdles – Getting Into Court
- More Hurdles - Limited Remedies
- Limits to the Court's Authority!
- Did PLRA Work?
- Practical Application – Recent Cases

Background

- 1966 – less than 250 federal inmate cases filed
- 1995 – over 40,000 inmates cases filed
- Federal court dockets were clogged with inmate cases – mainly *pro se* cases
- PLRA enacted as part of Newt Gingrich "Contract with America" in 1996

- (Schlanger, M.) Trends in Prisoner Litigation as the PLRA Enters Adulthood, 5 U.C. Irvine 153 (2015).

Background

- Increasing number of inmate lawsuits and increasingly onerous oversight of day-to-day operations of jails and prisons by federal judges
- Consent decrees were prevalent - federal docket was full of inmate cases
- PLRA was designed and passed to limit federal cases brought by prisoners

Background

- PLRA was also intended to limit the power of federal judges and get them out of running jails and prisons.
- Extremely good news for jails, prisons and municipal lawyers.
- Inmate lawsuits decreased.
- Easier to get cases dismissed.

Hurdles to Filing

- Inmate must exhaust all grievances before filing (affirmative defense if they don't – no obligation on inmate's part to show they did)
- If we interfere – court may excuse compliance
- Inmate must comply with all procedural requirements and timeframes (even if they can't get what they want – money damages)

Woodford v. Ngo, 548 US 81 (2006)
Jones v. Bock, 549 US 199 (2007)

Hurdles to Filing

- Since facility has burden of proof on affirmative defense of failure to exhaust – best practice is to put into policy or inmate manual exactly when a grievance is fully exhausted.
- Ex: When inmate has properly filed a timely appeal at available appeal level.

Albina v. Baca, 747 F3d 1162 (9th Cir 2014)
Woodford v. Ngo, 548 US 81 (2006)
Jones v. Bock, 549 US 199 (2007)

Hurdles to Filing

- If inmate transfers out before exhausting – at least one court has said that they couldn't exhaust, so no bar to lawsuit.
- Make it explicit that they can exhaust even if transferred and give them procedure and a few extra days to do it.

Albina v. Baca, 747 F3d 1162 (9th Cir 2014)
Woodford v. Ngo, 548 US 81 (2006)
Jones v. Bock, 549 US 199 (2007)

Hurdles to Filing

- PREA standards present a conflict – standards say we cannot impose time limits on grievances for sexual assault
- Federal statute vs. CFR standard
- "Can prisoner satisfy PLRA exhaustion by filing an untimely or procedurally improper grievance or appeal? We hold that proper exhaustion is necessary."

- 28 CFR 115.52
- Woodford v. Ngo, 548 US 81 (2006)

Hurdles to Filing

- Inmates get a “light” version of IFP status
- Inmate cannot file without paying full fees (but gets an installment payment plan)
- Inmates cannot get out of fees even through bankruptcy proceeding

Hurdles to Filing

- If 3 prior cases dismissed (frivolous, failure to state a claim or defendant is immune)
- Barred from filing new cases without full payment of filing fees - unless they show imminent danger of serious injury

More Hurdles

- Court must do early screening on all inmate cases (before docketing if possible) and dismiss if frivolous, malicious, fails to state claim or seeks relief from immune defendant

More Hurdles

- Defendants can waive the right to reply in any action. The waiver is NOT an admission of anything in the complaint.
- No relief may be granted until a reply is filed.
- Court may require an answer to be filed if inmate has reasonable chance to prevail.

Hurdles to Getting Damages

- No damages for mental injuries without a physical injury
  - Potential problem if inmate sexually assaulted but no physical injury?
  - What are physical injuries for denial of kosher diet? 10th Circuit says no recovery.
  - 6th Circuit recently found that 1st A violation is not a mental injury, and inmate can be compensated.

Hurdles to Getting Damages

- Recovery must go to any restitution owed!
- Reasonable efforts must be made to contact victims and tell them about damage award.

More Hurdles

- Unlike normal 42 USC 1983 actions – attorney fees are severely limited!
  - Hourly rate capped
  - No fees for collateral issues – proving actual violations or enforcing court order only

Judge's Authority Limited

- Ability to impose consent decrees significantly narrowed
- Narrowly tailored, can only last as long as necessary to remedy problem

Judge's Authority Limited

- Anyone here still operating under an old consent decree that you want out of?
- Move to terminate!
- Entitled to immediate relief if no finding that relief was narrowly drawn, extends no further than necessary, and is least intrusive means in original order.

  - 18 USC § 3626(b)

Judge's Authority Limited

- Once a motion to terminate an old consent decree is filed – statute provides automatic stay of the decree after 30 days.
- Remains stayed until final ruling on motion.

Judge's Authority Limited

- Single judge cannot order release of prisoner – only 3 judge panel w/ clear and convincing evidence

Judges STILL Have a Lot of Authority

- 3 Judge Panel Orders Release of 10,000 California Prisoners Due to Inadequate Medical Care –
- June 2013 Brown v. Plata



Did PLRA Work?

- Prison population has grown steadily since 1970 – now about 1.4 million
- Prison cases filed topped out in 1995 at appx 40,000 per year
- Sharp decline in the next three years – and has been stable at about 20,000 to 25,000 cases filed a year since (average reduction of 57.3 percent nationwide)

- (Schlanger, M.) Trends in Prisoner Litigation as the PLRA Enters Adulthood, 5 U.C. Irvine 153 (2015).

Did PLRA Work?

- Some states showed a huge decrease (approaching 90%). California has seen NO decrease after an initial drop!
- Huge number of cases don't get to trial – defendants win pre-trial about 80% of the time

Did PLRA Work?

- Defendants are settling less cases, and winning more often if they go to trial
- Inmate plaintiff success rate in federal court is about 11% (they lose 89% of the time)
- Fewer inmates have attorneys (about 5%)

Did PLRA Work?

- Damage awards also down since PLRA enacted
- 2012 – inmates won 58 cases – 15 of those won less than $1000
- Total damages nationwide for all 58 – about 1 million dollars (only 3 cases over 100k)

Recent Cases

- Pinson v. Samuels, 6th Cir. - 2014
- Chronic litigator – more than 100 lawsuits from prison
- Alleged that he was housed in SMU – he claimed it was "unconstitutionally violent and dangerous" and that he was homosexual and former gang member - and he faced a substantial risk of harm in an SMU
- PLRA 3 strikes rule – no more suits without paying filing fees unless inmate is in "imminent danger of serious physical injury"

- Pinson v. Samuels, 761 F 3d 1 (2014)

Recent Cases

- Court found that Pinson had not alleged enough to show he was in imminent danger of serious physical harm
- Case dismissed unless he paid filing fee within 30 days

- Pinson v. Samuels, 761 F 3d 1 (2014)

Recent Cases

- Hemmelreich v. Fed Bureau of Prisons
- Inmate didn't exhaust – but claims that captain threatened him (send him to the state pen where he would be shanked) if he filed more grievances

- 766 F3d 576 (6th Cir 2014)

Recent Cases

- Court must find facts in light most favorable to plaintiff on MSJ
- If true, a person of ordinary firmness would have been scared to file more grievances
- No MSJ – inmate gets a trial
- Plaintiffs can get to trial by alleging enough "facts" - but not if there is clear objective evidence (photos, video)

- 766 F3d 576 (6th Cir 2014)
- Scott v. Harris, 550 US 372 (2007)

Conclusion

- PLRA has made a real impact on inmate lawsuits
- Anyone defending inmate cases should consider PLRA issues BEFORE filing answer
  - Do you even need to answer?
  - Can you prove they didn't exhaust grievance procedure?
  - Did they allege a physical injury? 12(b)(6) or MSJ?

Conclusion

- Research to determine if they owe restitution or judgments – can be significant leverage to settle or obtain dismissal

Questions?

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